

(2014) 12 MAD CK 0261
In the Madras High Court
Case No : Writ Petition No. 11920 of 2006

R. Muthu

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11A

Citation : (2014) 12 MAD CK 0261

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Judgement

D. Hari Paranthaman, J.—The petitioner entered into service in the first respondent Railway as Khalasi on 28.04.1981. He was issued with a charge sheet dated 27.02.1992 alleging that he was unauthorisedly absent for a total period of 215 days in eight spells without proper application for leave.

2. An enquiry was conducted. In the enquiry, the petitioner admitted the charges. Based on the admission and also the muster roll that was produced in the enquiry, the Enquiry Officer recorded the finding of guilt.

3. Based on the findings of the Enquiry Officer, the petitioner was imposed with the punishment of compulsory retirement, by an order dated 23.07.1993.

4. Against the order of punishment, the petitioner preferred an appeal to the Appellate Authority and the Appellate Authority rejected the same by an order dated 01.12.1993.

5. Thereafter, the petitioner preferred revision petition and the same was also dismissed by an order dated 19.09.1994.

6. It seems that the petitioner approached the Conciliation Machinery under the Industrial Disputes Act, 1947, belatedly and the Central Government, issued an order dated 17.08.2004, referring the dispute relating to his non-employment to the second respondent Tribunal for adjudication, under Section 10 of the

Industrial Disputes Act, 1947.

7. The second respondent Tribunal took it on file as I.D.No. 407/2004. Before the Tribunal, both the parties filed their pleadings. The workman examined himself as W.W.1, while the Management examined one witness. The workman did not produce any document on his side. On the side of the respondent Management, 8 documents were marked as Exs.M1 to M8 that relates to the disciplinary proceedings resulting in the imposition of punishment of compulsory retirement. After hearing both parties, the second respondent Tribunal passed an award dated 09.08.2005 in I.D.No. 407/2004 rejecting the dispute.

8. Challenging the aforesaid award dated 09.08.2005 in I.D.No. 407/2004, the petitioner has filed the present writ petition.

9. Heard both sides.

10. The learned counsel for the petitioner has submitted that the Enquiry Officer cross examined the petitioner - workman in the enquiry and thereby he exceeded his limits as Enquiry Officer and it amounts to violation of principles of natural justice.

11. Secondly, the learned counsel for the petitioner has submitted that as per Rule 518(2) of Railway Establishment Code, Vol-I, disciplinary action could be taken only in the case of wilful absence. According to the petitioner, unauthorised absence could not amount to wilful absence.

12. Thirdly, the learned counsel for the petitioner has submitted that the second respondent Tribunal ought to have exercised its discretion under Section 11-A of the Industrial Disputes Act, 1947, by modifying the award, as it was merely a case of unauthorised absence.

13. On the other hand, the learned counsel for the first respondent took me through the records and submitted that there is no infirmity in the award of the Tribunal.

14. I have considered the submissions made on either side and perused the materials available on record.

15. In fact, same argument was advanced before the second respondent Tribunal that the petitioner was cross examined by the Enquiry Officer and therefore, the enquiry was a defective enquiry and the same shall be set aside. The second respondent Tribunal considered the same in para 9 of the award and held that the question put by the Enquiry Officer was not in the nature of cross examination. In this regard, it is relevant to extract the following passage in para 9 of the award in, as follows:

"9. But, on a perusal of records, I find it is not so, because the questions put by the Enquiry Officer to the delinquent are ? whether he has received the copy of the charge sheet; the next question he has asked whether he understood the charges, the third question he asked is whether he accept the charges framed

against him and when the delinquent employee namely the Petitioner has accepted the charges, lastly he has asked what is the reason for his absence and he has recorded the reason given by the Petitioner. Therefore, I find there is nothing to prove that the Enquiry Officer has cross examined the Petitioner..... "

I have no reason to disagree with the aforesaid findings on the factual aspect. Hence, I have no hesitation to reject the first contention raised by the learned counsel for the petitioner.

16. The second contention raised before me was also raised before the second respondent Tribunal. The second respondent Tribunal held that unauthorised absence amounts to wilful absence. The relevant passage in para 11 of the award in this regard is extracted hereunder:

"11..... Therefore, the allegation of the Petitioner that he can be charge sheeted only for wilful absence under Indian Railway Establishment Code and not for unauthorised absence is not acceptable one. Since both are one and the same and he cannot claim any benefit on words....."

I am in entire agreement with the aforesaid finding of the Tribunal.

17. Further, as rightly held by the second respondent Tribunal, the absence is not for one spell. Then it is a different matter. In fact, a lenient view could also be taken. That is, if there is absence for a short period of one spell supported by some medical evidence, the same could not be taken as basis for compulsory retirement. In this case, admittedly, the petitioner absented unauthorisedly in eight spells. In this regard, in para 11 of the award, it has been held by the second respondent Tribunal as follows:

"11..... Furthermore, the Petitioner in this case had absented for duty not for a continuous period but at eight different spells. Under such circumstances, the reasons given by the Petitioner that he was affected by jaundice and due to some family problems, he was absented for duty is not acceptable one....."

Therefore, I have no other option, except to reject the second contention raised by the learned counsel for the petitioner.

18. The third contention raised by the learned counsel for the petitioner that the second respondent Tribunal failed to exercise its jurisdiction vested under Section 11-A of the Industrial Disputes Act, 1947 also has no merit. The second respondent Tribunal has applied its mind to the facts of the case and thought it fit not to exercise its discretion under Section 11-A of the Industrial Disputes Act, 1947.

19. At this juncture, it is relevant to take note of the order dated 22.09.1993 passed by the Appellate Authority. The petitioner pleaded for mercy stating that he was regular after 1992. The records were verified and the Appellate Authority has held as follows in its order dated 22.09.1993:

"..... He had also indicated that he was regular in his duties after the said

period of 91-92. However, on verification of the records, it is found that during 92 he had absented himself for 189 days and during 93 till the date of his removal on 9.8.93 he was absent for 146 days. Therefore his submission that he was regularised the said period is factually incorrect."

20. In fact, it was pleaded by the respondent Railway in the counter statement filed before the second respondent Tribunal that the petitioner was habitually absented in his entire career and he suffered various punishment in this regard. The relevant passage that is found in para 4 of the award of the Tribunal in this regard is extracted hereunder:

"4..... Even from the service register of the Petitioner, it can be seen that number of red entries are made and he was awarded with several penalties for habitual absence during his service under the Respondent/Management. On several occasions, his annual increment was withheld for having absented unauthorisedly from duty without proper authority. Furthermore, his increment was also withheld as a penalty for his unauthorised absence from April 1989 to May, 1989. Similarly, on another occasion, one more increment was withheld for a period of six months as a penalty for his unauthorised absence from 13.6.89 to 16.7.89 without proper authority. In the year 1990, he was removed from service w.e.f. 15.4.90 as a penalty for unauthorised absence for about 72 days during the year 1989 and on appeal, it was modified to reduction to lower grade to the post of Khalasi....."

21. Taking into account the aforesaid circumstances, the second respondent Tribunal did not choose to exercise its jurisdiction under Section 11-A of the Industrial Disputes Act, 1947 and I also do not find any infirmity in the view of the second respondent Tribunal, particularly on the facts and circumstances of this case, as stated above. Hence, I am not inclined to interfere with the award of the second respondent Tribunal.

22. Accordingly, the writ petition fails and the same stands dismissed. No costs.